

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

JOHN DOE,	.
	.
Plaintiff,	.
	. Case No. 21-cv-20706
vs.	.
	. Newark, New Jersey
BAILE SEBROW,	. December 21, 2022
	.
Defendant.	.
	.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE EDWARD S. KIEL
UNITED STATES MAGISTRATE JUDGE

APPEARANCES (the parties appeared via teleconference):

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1 (Commencement of proceedings)

2

3 THE COURT OFFICER: We're on the record.

4 THE COURT: All right. We're on the record in the
5 matter of Doe versus Sebrow. It's Case 21-cv-20706.

6 If I could have the appearance on behalf of
7 plaintiff, please.

8 MR. SZALKIEWICZ: Daniel Szalkiewicz, Daniel
9 Szalkiewicz & Associates PC, 23 West 73rd Street, Suite 102,
10 New York, New York 10023, for the plaintiff -- is to my left.

11 Good afternoon, Your Honor.

12 THE COURT: Good afternoon.

13 And on behalf of the defendant?

14 MR. HELLER: Yes, good afternoon, Your Honor. Ira
15 Heller representing Baile Sebrow, who is not present.

16 Does Your Honor want my office address, as --

17 THE COURT: No. You don't have to put it.

18 But why is your client not present?

19 MR. HELLER: Okay. Truthfully, I did not know that
20 my client had to be here. I heard it was a conference
21 regarding discovery.

22 In circumstances --

23 THE COURT: Why do you believe it was a
24 conference -- do you not check the docket?

25 MR. HELLER: Well, let me also, you know, explain

1 that there's been a -- a lot of problems as far as my having
2 gotten proper information because of the fact that the email
3 address on record is 10 years old. I'm in the process of
4 fixing that. I was not able to go and do it myself. I have
5 to get somebody on the phone to help me do it.

6 So I have to start with an apology of all the mixup
7 that's happened till now.

8 I don't usually work in the federal court, Judge.
9 I did one -- in the 15 years of practice, I've done one
10 federal case; so I am not really familiar --

11 THE COURT: And that excuses you from having the
12 right email address? And it sounds like you were given
13 notice of it by plaintiff's counsel and you said that he was
14 kind enough to provide notice of this.

15 That doesn't lead you to go into the docket and see
16 what's required of this conference today?

17 MR. HELLER: Apologies, Your Honor.

18 THE COURT: Apologies -- that's -- sir, you just
19 wasted everybody's time today. Both sides filed a settlement
20 memo or provided one to me. And for you to say that you
21 thought today's conference was going to be about discovery
22 when you sent me a settlement memo doesn't ring true to me.
23 It sounds like you knew today was going to be a settlement
24 conference.

25 MR. HELLER: I can get my client on the phone.

1 THE COURT: That's not good enough. Your client
2 was supposed to be here.

3 You have a motion that's pending against you to
4 dismiss your counterclaim, and I don't know -- somewhere in
5 your confidential settlement memo -- I am not giving any
6 state secrets away -- it says that you think that that should
7 somehow be denied, but you haven't filed anything against it.

8 MR. HELLER: Your Honor, I would likely file a
9 motion to dismiss --

10 THE COURT: That's denied.

11 MR. HELLER: Well, Your Honor --

12 (Simultaneous conversation)

13 THE COURT: Well, what, to file a motion to
14 dismiss?

15 MR. HELLER: Yes, Your Honor, if I may just
16 speak --

17 THE COURT: You filed an answer. And a
18 counterclaim.

19 MR. HELLER: Okay. Well, Your Honor, can I just
20 speak for a minute.

21 THE COURT: You can speak as long as you want. Go
22 ahead.

23 MR. HELLER: Thank you, Judge.

24 As far as this case is concerned, there's a case
25 going on with the same facts and circumstances in New Jersey

1 in the Essex County Supreme Court.

2 Mr. Szalkiewicz is an expert witness in that case.
3 He's already conflicted, Your Honor. There are -- these
4 cases are already being adjudicated as we speak in Essex
5 County in New Jersey. Currently, Mr. Szalkiewicz is on the
6 stand authenticating evidence that he intends to use in this
7 case.

8 THE COURT: Is that before me today?

9 MR. HELLER: It's not before you today, Your Honor.

10 THE COURT: So then why are you bringing it up
11 today? You would have to make a formal motion.

12 MR. HELLER: I will, Your Honor.

13 THE COURT: Okay. Then don't ask me to make a --
14 whether you can make a motion. You make a motion as you feel
15 like you need to. Right?

16 MR. HELLER: Yes, I will.

17 THE COURT: But it seems to me it's a little late
18 for that. You filed an answer and a counterclaim. It sounds
19 like you want to rule -- move under 12(b)(6). But I think
20 that time has come and gone and your time to file a response
21 to the motion to dismiss counterclaim, which was filed back
22 in October, has come and gone too.

23 So as far as this Court's concerned, that motion is
24 unopposed. Right?

25 MR. HELLER: Yes, Your Honor.

1 THE COURT: All right. Well, we have an issue with
2 the sanctions as well. I told everybody that I would
3 issue -- that I would discuss the issue of sanctions. You
4 didn't respond to it in any way. You didn't show up for the
5 conference. But that sounds like that that was because you
6 never changed your email address with the federal court.
7 Right?

8 MR. HELLER: Yes, Judge --

9 THE COURT: Any other excuse other than that?

10 MR. HELLER: No. That's the reason.

11 THE COURT: Has your email address been changed
12 yet?

13 MR. HELLER: Again, you told you, Your Honor, that
14 I went in to change it. I need the help of somebody in the
15 court. I will call again today.

16 THE COURT: When did you call the court to change
17 it?

18 MR. HELLER: Before the weekend.

19 THE COURT: All right. Well, I'll grant
20 plaintiff's counsel -- well, I will ask plaintiff's counsel
21 to file further declaration for services relating to the
22 preparation of the supplement memo and attendance at this
23 conference today. Today's been a waste of time for the Court
24 and for plaintiff.

25 And I hope this doesn't continue, sir. I don't

1 know what else to do.

2 If you could file that within seven days, sir, a
3 declaration of services, certification of services, can you
4 respond to it within seven days? I'll take both of them
5 under consideration and enter an order.

6 All right, sir.

7 Anything further for the plaintiffs?

8 MR. SZALKIEWICZ: We still haven't received the
9 initial disclosures, Your Honor, that defendant was ordered
10 to provide to us by last Thursday.

11 THE COURT: Oh, that's right.

12 And -- and I did enter an order requiring defendant
13 to respond to the initial disclosures that's required under
14 Rule 26. I guess that wasn't done either. Huh?

15 MR. HELLER: No, Judge.

16 THE COURT: All right. You're granted leave to
17 file an application for sanctions as it related to that as
18 well. I don't know whether you want to seek to strike the
19 counterclaim or enter default, but I'll leave it to you file
20 that letter application.

21 Okay, sir?

22 MR. SZALKIEWICZ: Thank Your Honor.

23 THE COURT: All right. We're off the record.

24 (Conclusion of proceedings)

25

Certification

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I further certify that I am in no way related to any of the parties hereto nor am I in any way interested in the outcome hereof.

s/ *Sara L. Kern*

24th of January, 2023

Signature of Approved Transcriber

Date

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